

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

In re:)
)
 KEVIN ANTHONY MARKS)
)
 AND)
)
 AMANDA RENEE MARKS)
)
 Debtor(s))
)
 RICHARD V. FINK, STANDING)
 CHAPTER 13 TRUSTEE,)
 Plaintiff)
)
 vs.)
)
 CARVANA LLC)
 1930 W. RIO SALADO PKWY)
 TEMPE, AZ 85281)
)
 CARVANA LLC)
 PO BOX 29018)
 PHOENIX, AZ 85038)
)
 CARVANA LLC)
 PO BOX 29002)
 PHOENIX, AZ 85038)
)
 CARVANA LLC)
 c/o CSC-LAWYERS INCORPORATING)
 SERVICE COMPANY)
 221 BOLIVAR ST.)
 JEFFERSON CITY, MO 65101)
)
 Defendant(s).)

BANKRUPCTY CASE
 NO. 20-42050-can-13

 ADVERSARY CASE NO.
 21-4010-can

ORDER

COMES NOW Richard V. Fink, the Standing Chapter 13 Trustee, and Creditor, Carvana LLC, by and through counsel, and hereby stipulate and agree as follows:

- 1) On February 23, 2021, Plaintiff Richard V. Fink (“Trustee”) filed adversary complaint 21-4010-can against Defendant Carvana LLC (“Carvana”).

- 2) The complaint sought to avoid the transfer by Kevin Anthony Marks (“Debtor”) to Carvana regarding the granting of a security interest in a 2015 Ford Flex with VIN 2FMGK5C88FBA16800 (“Vehicle”).
- 3) The parties hereto acknowledge that:
 - a. On or about August 5, 2020, Debtor purchased the Vehicle and granted a security interest in the Vehicle to Carvana.
 - b. Debtor filed for relief under Chapter 13 of Title 11 of the United States Code on December 2, 2020.
 - c. Defendant’s security interest in the Vehicle was perfected by the act of Debtor titling the Vehicle on October 23, 2020, more than 30 days from the purchase date.
 - d. Defendant’s security interest in the vehicle was perfected within the 90-day period prior to the filing of the bankruptcy petition but outside of the 30 days allowed for the perfection of such interest pursuant to 11 U.S.C. §547(b) & (c)(3)(B).
 - e. Debtor filed for relief under Chapter 13 of Title 11 of the United States Code on December 2, 2020 and was insolvent at the time of the transfer.
 - f. The perfection of the security interest was a transfer for or on account of an antecedent debt owed by Debtor before said transfer was made and would allow Defendant to receive more than Defendant would receive if the Debtor filed a case under Chapter 7 of Title 11 of the United States Code.
 - g. The Trustee asserts that the security interest of Defendant in the Vehicle is avoidable under 11 U.S.C. §547 and that the property may be preserved for the benefit of estate pursuant to 11 U.S.C. §550 and §551.

IT IS THEREFORE ORDERED:

- 1) Carvana’s lien on the 2015 Ford Flex with VIN 2FMGK5C88FBA16800 is avoided pursuant to 11 U.S.C. §547 and the property is preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. §550 and §551.
- 2) For the purposes of Debtor’s Chapter 13 case, Carvana’s claim 1 shall be treated by the Trustee as a secured claim in the amount of \$395.00 (the adequate protection payments previously disbursed) with the remainder allowed as a non-priority unsecured claim; and
- 3) Upon successful completion of a Chapter 13 plan by Debtor, Carvana will execute and deliver to Debtor a release of lien. If the Debtor converts his case to a Chapter 7 case, Carvana shall release its lien to the Chapter 7 Trustee.
- 4) In the event that Debtor’s Chapter 13 bankruptcy case is dismissed, Carvana’s security interest shall, as provided in 11 U.S.C. §349(b), remain unaffected by the bankruptcy or this Order. Any payments made to Carvana during the pendency of the bankruptcy

shall be applied to any debt owed by the Debtor to Carvana, in accordance with the pre-petition agreement between Carvana and the Debtor and applicable law.

IT IS SO ORDERED.

Dated: 4/7/2021

/s/ Cynthia A. Norton

Cynthia A. Norton
UNITED STATES BANKRUPTCY JUDGE

Submitted and Approved by:

/s/ Dana M. Estes

Dana M. Estes, #47540
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Approved by:

/s/ Michael P. Gaughan

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